

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1789 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BOCHASANWASI SHRI AKSHAR PURSHOTTAM SANSTHA

Versus

THOBHANBHAI JERAMBHAI DARVA

Appearance:

MR NV ANJARIA for Petitioners

MS HANSA PUNANI, AGP for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 24/03/2000

CAV JUDGEMENT

#. This revision application, by the defendants, directed against the order of the court below under which application filed by the plaintiff-respondent No.1 for the amendment of the plaint was came to be granted.

#. The learned counsel for the petitioner contended that by this amendment the plaintiffs-respondent No.1 sought to plead altogether a different cause of action for trial in the suit. The sale deed which is sought to be challenged by this amendment in the plaint is altogether for a different land. The learned counsel for the respondent No.1 strongly opposed this revision application. Shri Joshi contends that the court has all the right to grant the amendment in the pleadings as prayed for by the litigants. This amendment in the pleadings can be granted at any stage of the proceedings. The amendment has become necessary because of the subsequent developments, which have been taken place. Shri Joshi lastly contended that the grant of amendment does not mean grant of final relief. The relief as prayed for can be granted or not is not to be decided at this stage. On the merits of the claim as proposed to be added by amendment in the plaint cannot be go into by the court at this stage.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is no more res integra that the court should be very very liberal in grant of the amendments in the pleadings. One of the object and purpose underlying the provisions of Order 6 Rule 17 of the Code of Civil procedure or to grant all those amendments in the pleadings which prevents the multiplicity of the proceedings of suits. The plaintiff has all the right as per the case of the petitioner also to challenge the subsequent sale deed of the other land. By this amendment in the plaint one of the purposes is to be served is to avoid the multiplicity of proceedings. The question at this stage for consideration of application filed by the litigant under Order 6 Rule 17 of the Code of Civil Procedure is not that ultimately whether he will succeed on claim added by amendment of plaint or not. The amendment in the plaint are to be liberally granted as by grant of the amendment no prejudice whatsoever is likely to be caused to the other side. All defences that it is a different cause of action or that the cause of action sought to be raised is barred by limitation or any other defence which is available can be put in the written statement to be filed to amended plaint. The

court has to frame additional issues and while deciding those issues ultimately if it is satisfied with the case of the defendant it will reject the suit itself. But, this approach of the defendant to challenge this order at this stage is difficult to appreciate. The interference with the impugned order cannot be made by this court as this case does not fall under any of the clauses of (a), (b) and (c) of Sub-section (1) of Section 115 of the Code of Civil Procedure. Where the court is satisfied that in case the order impugned is allowed to stand it will not occasion a failure of justice or cause irreparable injury to the party concerned it may decline to interfere with that order. In the case in hand, if the order impugned in this revision application is allowed to stand it will not occasion failure of justice or will cause irreparable injury to the petitioner. It is to be stated at the cost of repetition that the petitioner has all the right to raise all the defences against the amended plaint in the written statement to be filed. They can also raise their point that it is different cause of action which cannot be tried in the suit or other defences legally available to them. This order passed by the court below cannot be interfered with and set aside at this stage. Not only this the defendants-petitioners have opportunity to challenge this order if necessary arises when on their failure in the suit they chose to file the appeal against judgment and decree of the court below. It is only an interlocutory order and it is always subject to the correction by the Appellate Court and for which the petitioners are to wait for the final decision in the suit. This is another ground on which no interference is called for by this court under Section 115 of the Code of Civil Procedure with the impugned order. This practice of the litigants to stall the proceedings of the suit by filing civil revision application against the interlocutory order deserves to be deprecated. If it is really an illegal order it is always subject to the correction by the Appellate Court and that remedy is not barred but not at this stage.

#. So taking into consideration the totality of the facts of this case it is not a fit case where interference of this court under Section 115 of the code of Civil Procedure calls for.

In the result, this revision application fails and the same is dismissed. Rule is discharged. Interim relief granted stands vacated. However, the parties are directed to bear their own costs of the litigation. The suit out of which this Civil Revision Application arises is of the year 1992. The learned Trial Court is directed

to decide the suit within a period of six months from the date of the receipt of the writ of this order or certified copy thereof whichever is earlier.

(S.K.Keshote, J.)

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